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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Amendment to the Commission's Rules
Regarding a Plan for Sharing the Costs
of Microwave Relocation

WT Docket No. 95-157

PCIA CLEARINGHOUSE REPORT TO THE COMMISSION

The PCIA Microwave Clearinghouse ("the Clearinghouse") hereby submits its first report on its progress implementing the Commission's cost-sharing plan.¹ As detailed below, the Clearinghouse has been extremely successful in facilitating the cost-sharing process for PCS industry participants. Because of significant preparation prior to beginning operation, all clearinghouse systems and procedures developed by PCIA and the PCS industry have performed well, and Clearinghouse operations are running smoothly. However, the Clearinghouse has discovered that some PCS licensees are unaware of their obligations to file prior coordination notices (PCNs) with the Commission-designated clearinghouses prior to commencing operations. Therefore, the Clearinghouse requests that the Commission issue a Public Notice reminding all PCS licensees that they must file a PCN for each base station put into operation.

¹ See Memorandum Opinion and Order, WT Docket No. 95-157 at 12 (Aug. 14, 1996).

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I. TO ENSURE THAT ALL PCS LICENSEES MEET THEIR COST SHARING OBLIGATIONS, THE COMMISSION SHOULD ISSUE A PUBLIC NOTICE REITERATING THE PCN REQUIREMENTS

In its Order adopting a cost sharing plan, the Commission noted that prior to commencing operations, PCS licensees are required to send PCNs to existing microwave users in the area. In order to give the clearinghouses a method of identifying cost sharing obligations, the Commission required that PCS licensees file copies of these PCNs with the cost sharing clearinghouses.² The PCIA Clearinghouse uses these PCNs to determine if a PCS licensee's base station is within the interference "box" designated by the Commission and, thus, whether a cost sharing obligation is triggered.

The Clearinghouse has recently discovered that although several PCS licensees have announced that they have commenced operations, not all of these licensees have filed PCNs with the Clearinghouse for their base stations. As part of its efforts to facilitate the cost sharing process, the Clearinghouse has sent letters to all A, B, and C PCS block licensees explaining how the PCIA Clearinghouse works and reminding them of their PCN obligations. However, because of the importance of PCNs to the cost sharing mechanism, the Clearinghouse requests that the Commission issue a Public Notice reiterating that the PCN filing requirements are part of the Commission's rules and that failure to file PCNs is a violation of the terms of the PCS license.

PCIA believes there are two primary issues regarding unfilled PCNs. First, many PCS licensees send PCNs to microwave licensees up to six months in advance of turning on the

² 47 C.F.R. § 24.249.

base stations.³ However, PCS licensees are reluctant to file PCNs with the clearinghouses at that time because they have not yet determined if there will be site acquisition or interference problems which may prevent them from constructing and operating the base station. To avoid this difficulty, the Commission should clarify that, under Section 24.249, PCS licensees must file PCNs with both clearinghouses in accordance with Section 101.103 for all pre-operational base stations. This will also minimize the problem of the Clearinghouse receiving PCNs for base stations that are never constructed because of interference or other problems.

Second, some PCS licensees are not filing PCNs with the clearinghouses because the licensee knows that all nearby microwave incumbents have already been relocated. As the Commission explained in its Cost Sharing Order, the PCS licensee "obtains reimbursement rights for a particular link on the date that it signs a relocation agreement with the microwave incumbent operating on the link at issue."⁴ Therefore, since the relocater has acquired reimbursement rights, subsequent PCS licensees must file PCNs even though the incumbent may no longer be operating.⁵ The Clearinghouse requests that the Commission also reiterate this requirement in its Public Notice so that all PCS licensees will fully understand their obligations.

³ Part 101 rules require that PCNs be filed between six months and 30 days prior to operation of the base station. 47 C.F.R. § 101.103.

⁴ First Report and Order, WT Docket No. 95-157, ¶ 72 (Apr. 25, 1996).

⁵ *Id.*, ¶ 73.

II. THE CLEARINGHOUSE HAS BEEN SUCCESSFUL IN ITS PERFORMANCE GOALS FOR IMPLEMENTING THE COMMISSION'S COST SHARING PLAN

Because of significant planning prior to beginning operations, the Clearinghouse has had an excellent start. Since it opened for business, the Clearinghouse has registered 1,927 relocated links from a large number of PCS licensees. In addition, it has received PCNs for 7,590 PCS base stations. The result of this auspicious beginning is that the Clearinghouse has already identified over 80 cost sharing obligations. As PCS licensees continue to build out their systems, the Clearinghouse anticipates that all of these numbers will increase.

Due to the prudent oversight of the Board of Directors and the Clearinghouse staff, the Clearinghouse is within its budget. Of course, as a non-profit entity funded by cost-sharing participants, the Clearinghouse will continue to minimize expenses to the extent consistent with providing excellent service.

III. THE PCIA MICROWAVE CLEARINGHOUSE BOARD AND STAFF HAVE DEVELOPED POLICIES AND PROCEDURES TO FACILITATE THE COST SHARING PROCESS

A. The Board Of Directors Ensures That Clearinghouse Operations Fully Benefit The PCS Industry

The Clearinghouse is an independently incorporated subsidiary of PCIA, with its own by-laws, membership, and Board of Directors. Board membership is open to all entities that are subject to the Commission's cost sharing rules. The Board believes that this structure allows for wide participation from all cost sharing participants and ensures a sufficiently wide representation of interests so that the views of no one group will be able to dominate the actions of the Board.

The current Board of Directors consists of: William J. Todd (President) – PrimeCo; Scott Fox (Vice-President) – BellSouth; Brian Zelk (Treasurer) – Sprint Spectrum; Jerry O'Brien (Secretary) – Omnipoint; Barclay Jones – APC; Bruce Crair – Cox California; Bob Glennon – APT; Steve Apsell – Pacific Bell Mobile Services; and Jay Kitchen – PCIA. The first Board meeting was held on November 4, 1996, and three meetings have been held subsequently. The Board will continue to meet frequently to oversee Clearinghouse operations. As a group, current Board member companies hold licenses in most of the PCS blocks. However, the Board is actively encouraging additional licensees in the C-F blocks to join the Clearinghouse and expects to add additional Board members soon.

The Board can have a maximum of fifteen members and is elected from the membership. The Board determines the general policies to govern the Clearinghouse and approves the staff that handles day-to-day management activities. The Board also determines the appropriate fees to be charged for Clearinghouse services and approves the operating budget.

In order to resolve new issues that have arisen and assist the Clearinghouse staff, the Board has formed a Technical Subcommittee made up of representatives of Clearinghouse members with engineering expertise. This Subcommittee will study complex issues such as cost sharing obligations in Gulf Coast areas and computation of unlicensed PCS cost sharing obligations. In addition, this Subcommittee is reviewing the impact the Commission's license disaggregation decision will have on cost sharing and assisting the Clearinghouse staff in developing appropriate policies.

B. The Clearinghouse Staff Is Responsible For Ensuring Efficient Operations And Encouraging Broad Clearinghouse Participation

To ensure that the Clearinghouse is run in an efficient and competitively neutral manner, the Board has approved a professional staff to manage Clearinghouse operations. Heather McCormack is the Clearinghouse Coordinator and is dedicated full-time to the Clearinghouse. She is responsible for all Clearinghouse operations and for monitoring other Clearinghouse staff members. To save on costs, the Clearinghouse utilizes PCIA's coordination and other staff members on an as-needed basis. Gerry Ahnert, PCIA's MIS Project Manager, and Larry Davies, PCIA's software programmer, both provide significant support to Clearinghouse operations and have developed the databases necessary to run the Clearinghouse. In addition, the Clearinghouse also takes advantage of PCIA's financial and regulatory resources when necessary through Jay Kitchen – PCIA President, John Sherlock – PCIA Senior Vice President and Chief Operating Officer, Mark Golden – PCIA Senior Vice President of Industry Affairs, Mary Madigan – PCIA Director of External Affairs, Lori Baynton – PCIA Vice President of Spectrum Management, and Leigh Veshosky – PCIA Director of Financial Management.

The Board of Directors has charged the Clearinghouse staff with promoting clearinghouse membership. To this end, the Clearinghouse has sent mailings to all A-C block licensees explaining the cost sharing process and how the Clearinghouse works. Now that the D-F block auctions have been completed, the staff will send similar mailings to those licensees. In addition, the staff is encouraging new licensees to become more involved in the Clearinghouse and to join the Board of Directors. The staff is also working with UTAM,

Inc., the unlicensed PCS frequency coordinator, to facilitate the determination of UTAM's cost sharing obligations.

C. The Clearinghouse Has Taken Strong Measures To Ensure That Confidential Information Is Well Protected

Because of the sensitive proprietary and competitive nature of the information which the Clearinghouse must collect, the Board of Directors has adopted strict confidentiality policies to ensure that this information is distributed only to those entities who require it for legitimate cost sharing purposes. The information submitted to the Clearinghouse is treated as confidential, including vis-a-vis Clearinghouse members. It is released only to PCS licensees which require such information to evaluate and/or support their cost sharing obligations, as appropriate. The Clearinghouse has also developed a non-disclosure agreement, attached hereto as Exhibit 1, which is available to any Clearinghouse participant that requests such a document prior to submitting information to the Clearinghouse. This ensures all participants that the information they are required to give the Clearinghouse is being handled appropriately. Almost all clearinghouse members have signed such agreements and consider the availability of a non-disclosure agreement to be a fundamental responsibility of the Clearinghouse.

To minimize the potential for inappropriate release of confidential information, the Clearinghouse has worked with the industry to determine the minimum information necessary to determine cost sharing obligations and has developed software to identify these obligations using this data.⁶ To ensure that only this information is submitted, the Clearinghouse has

⁶ The relocating entity is responsible for maintaining documentation supporting relocation costs
(Continued...)

created a specific filing format and produced a computer disk version that participants can use when submitting their information. The disk version contains fields for entering only the required information. In addition to maintaining the confidentiality of relocation agreements, this process is easier for the Clearinghouse and simplifies database administration. In informing participants of either a cost sharing obligation or opportunity, the Clearinghouse does not identify a base station or link by its location or coordinates. Instead, the Clearinghouse refers only to the internal identification number assigned by the participant. In addition, the Clearinghouse treats all PCNs as confidential and under no circumstances will the Clearinghouse release the information contained on individually filed PCNs.

To further protect the confidential information in the Clearinghouse, only three Clearinghouse staff members have access to the database: Heather McCormack, Gerry Ahnert, and Larry Davies. Access to the database will continue to be kept to the minimum number of persons necessary. Internal confidentiality policies and procedures, and, if appropriate, confidentiality agreements are implemented for all Clearinghouse personnel. The Clearinghouse work station has been set up in a private location at PCIA's offices. In addition, the Clearinghouse has its own dedicated computer, printer, fax machine, and storage and filing areas. To date, the PCIA Clearinghouse has not had any problems or complaints regarding its treatment of confidential and proprietary information.

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which must be shared with an entity identified as owing a cost sharing obligation upon request.

IV. CONCLUSION

The PCIA Microwave Clearinghouse has made an excellent start in facilitating the implementation of the Commission's cost sharing plan. However, to ensure that this success continues and that all PCS licensees meet their cost sharing obligations, the Clearinghouse urges the Commission to issue a Public Notice reiterating the PCN filing requirements and encouraging PCS licensees to fulfill their license obligations.

Respectfully submitted,

PCIA MICROWAVE CLEARINGHOUSE

By: R. Michael Senkowski
R. Michael Senkowski
Suzanne Yelen
WILEY, REIN & FIELDING
1776 K Street, N.W.
Washington, D.C. 20006
(202) 429-7000

By: William J. Todd / sy
William J. Todd - President
Heather McCormack - Coordinator
PCIA MICROWAVE CLEARINGHOUSE
500 Montgomery Street
Suite 700
Alexandria, VA 22314-1561
(703) 739-0300

February 3, 1997

EXHIBIT 1

**AGREEMENT FOR NON-DISCLOSURE
OF CONFIDENTIAL INFORMATION**

This Agreement for Non-Disclosure of Confidential Information is made effective as of the ____ day of _____, 199__, by and between the Personal Communications Industry Association, Ltd., a Virginia non-stock corporation ("PCIA"), with principal offices at 500 Montgomery Street, Suite 700, Alexandria, Virginia 22314, and _____, a _____, (the "Company"), with principal offices at _____.

WHEREAS, the Federal Communications Commission ("FCC") has designated PCIA to serve as a cost sharing clearinghouse for Personal Communications Service ("PCS") broadband licensees and other eligible parties involved in the microwave relocation cost sharing process (the "Microwave Relocation Clearinghouse Program") as authorized by the FCC; and

WHEREAS, the Company wishes to register with the PCIA Microwave Clearinghouse, Inc., a Virginia non-stock corporation (the "Clearinghouse") formed at the direction of PCIA, and to provide certain information as requested by the Clearinghouse and authorized by the FCC to facilitate in the cost sharing process, relating to microwave relocation; and

WHEREAS, the Company has agreed to pay to the Clearinghouse a transaction fee upon determination of a cost sharing obligation owed to the Company from a subsequent PCS licensee or other eligible party, as required by the FCC; and

WHEREAS, PCIA may have access to, or be provided with, and/or develop certain data, documentation and other propriety information pertaining to the Company as it relates to the relocation of microwave licensees, the location of PCS stations by the Company, and the costs and monies paid pursuant to agreements entered into by the Company with respect to relocated microwave links, which the parties hereto agree should be maintained in confidence by PCIA (hereinafter referred to as the "Confidential Information" or the "Information"); and

WHEREAS, the Company is willing to permit authorized representatives of PCIA and the Clearinghouse access to and use of such Confidential Information for the limited purpose of accomplishing the Microwave Relocation Cost Sharing process and functions of the Clearinghouse, in accordance with the following terms and conditions;

NOW, THEREFORE, in consideration of the mutual covenants and promises hereinafter set forth and other good and valuable consideration, PCIA and the Company agree as follows:

1. PCIA shall use the Confidential Information obtained from the Company in performing its Microwave Relocation Clearinghouse Cost Sharing functions on behalf of the Company, solely for accomplishing the services necessary in undertaking and administering the Microwave Relocation Clearinghouse Program, as authorized by the FCC. PCIA shall treat all such Confidential Information received from the Company as confidential. All such Information received and developed by PCIA pertaining to the cost sharing relocation process of the Company shall remain the sole property of PCIA, and shall at all times be kept confidential by PCIA and, subject to the provisions of Paragraph 3 below, not disclosed to any third parties.

2. For a period of five (5) years following receipt of the Information, PCIA shall disclose such Confidential Information gathered by reason of performing its Microwave Relocation Clearinghouse functions only to such of its and the Clearinghouse's employees, officers, agents, attorneys, advisors, and accountants ("Permitted Parties") as shall require the Information in order to carry out the services and manage the program in undertaking the Microwave Relocation Cost Sharing Program and the Clearinghouse functions, and only to the extent such Information is necessary to perform such Permitted Parties' functions and the Microwave Clearinghouse process and administration of the Program. PCIA shall treat such Confidential Information as it would its own confidential information. All Permitted Parties of PCIA and the Clearinghouse shall be advised of the confidentiality of such Information and the agreement of confidentiality entered into by PCIA and the Company made herein.

3. PCIA and the Company agree that this Agreement shall not apply to any portion of the Confidential Information which:

- (a) is known to the other party prior to receipt thereof under this Agreement, as evidenced by written records;
- (b) is disclosed without restriction to the other party in good faith by a party not a permitted party of PCIA who is in lawful possession thereof and who has the right to make such disclosures;
- (c) is or shall have become public knowledge, by publication or otherwise, through no fault of the party having the obligation of confidentiality under this Agreement;
- (d) is otherwise required to be disclosed by PCIA and/or the Clearinghouse to the FCC or to any other party as required by the FCC in the conduct of performance of the services of PCIA and the Clearinghouse in the cost sharing process;

- (e) is otherwise required to be disclosed by a party pursuant to applicable law and/or pursuant to a court order or other administrative or judicial procedure, rule or order.

4. The parties specifically acknowledge and agree that the terms and conditions of the above covenants are reasonable and necessary for the protection of each party's business and duties and the Confidential Information and to prevent damage or loss to a party as a result of any action taken by any other party not in compliance with this Agreement.

5. In the event that any portion of this Agreement is held invalid or unenforceable for any reason, it is hereby agreed that such invalidity or lack of enforceability shall not affect the other portions of this Agreement and that the remaining terms and conditions or portions thereof shall remain in full force and effect and any court of competent jurisdiction may modify this objectional provision so as to make it valid, reasonable and enforceable.

6. This Agreement shall not obligate either party to grant the other party any rights to enter into any agreement or perform any other service, whether under this Agreement or otherwise.

7. The Agreement shall be binding upon the assigns and successors of each party.

8. THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE COMMONWEALTH OF VIRGINIA. This Agreement may not be modified except in writing.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first set forth above.

PERSONAL COMMUNICATIONS INDUSTRY
ASSOCIATION, LTD.

By: _____
Title: _____

By: _____
Title: _____